8.

Billa Vera:

OR, THE

ARRAIGNMENT

OF

IGNORAMUS.

Put forth out of Charity, for the use of Grand Inquests and other Jury's;

The Sworn Assertors of Truth and Justice.

In a LETTER to a Friend.

PROV. XXIV. 24.

He that saith unto the Wicked, Thou art Righteous, Him shall the People Curse; Nations shall abhor him.

LONDON,

Printed for *Robert Clavel* at the *Peacock* in St. *Paul's* Church-yard. 1682.

Billa Vera, &c.

SIR,

YOU demand my opinion of a *Proteſtant Plot* and an *Ignoramus* Jury: 'Tis a hard province you put me upon: but I have courage enough to be honeſt; and if I be miſtaken in my judgment, I know you have Charity enough to excuſe my weakneſs, for that reaſon.

A *Proteſtant Plot*, I do confeſs, is a Title I do not well reliſh; becauſe it throws a reproach upon Some ſort of perſons, which do no way deſerve it. The word *Proteſtant* came from the *Auguſtan Confeſſion*; and the occaſion of it was taken from the cloſe of their Addreſs to *Charles* the *Fifth*, wherein they *Proteſt* ſolemnly and publickly, They will adhere to that Confeſſion, till ſome ſedate and amicable

compoſure of that Cauſe ſhould reduce them to other Sentiments. In that Confeſſion They openly declare, that *Chriſtians of neceſſity ought to obey their preſent Laws and Magiſtrates, unleſs they Command us to Sin.* And I muſt tell you, the Church of *England* took her Meaſures from the *Proteſtants* of That Confeſſion.

But ſome *Zelots* of Reformation, have ſpread their pretenſions much wider than the *Proteſtants*, and extended their attempts as far (I can not ſay altogether o'th' other ſide) as the Church of *Rome* had done before them; and never left Shuffling the Cards till they had turn'd up a *Trump* of their own *Suite*.

Whether we have got ſuch a ſort of *Reformers* among us, will be no hard matter to determine, if we inquire a little into their Principles, and conſider their temper and inclinations; For they muſt renounce the Church of *England*, and become *Schiſmatics*, before they can commence Rebels.

Two things have deſervedly brought the Church of *Rome* under the Reproach of Treaſon and Sedition: 1. Their *Doctrines* and profeſt Opinions; Principles, which diſpoſe the

the minds of Subjects for such treasonable attempts. Hereupon, when the Instigation or Command of their Superiours gives the word, They are ready *prim'd* to take fire, and discharge their Rebel-fury upon their Governours.

And (2.) their *Practices*, from time to time, have been so Uniform to those Principles, that the Convictions of their Guilt have been no less notorious than their perpetrations have been detestable and pernitious.

And may we not observe a sort of men, that, while they pretend to abhor the *Superstition* and *Tyranny* of that Church, do nevertheless espouse their *Principles* of Disloyalty, and practice disobedience to the *Civil* Government? there's nothing more clear and manifest to persons that converse with Books and Modern Story. As for Matter of *Fact*, he that is at a loss for Evidence, let him be sent into the Kitchin among such as converse only with Soat and Smoak to light his Candle at Noon-day to seek the Sun.

But besides ill principles and disaffection to the Government, this sort of men are generally of an ill temper; and because they fansy that

that all good nature was loſt in *Adam*, they think it inevitable to be ill-humour'd, moroſe and of a peeviſh diſpoſition; and then no ties of *Humanity* can hold, no inſtances of *Civility* can oblige them. And when this ill temper of nature meets with a little *ferment* of Diſguſt from men of another Kidney, they grow ſowr and malitious, and preſently ſet all their Wits a work to meditate revenge. And if they have got a ſtock of *Popularity*, or craft enough to be preciſe in their Converſation, then Religion is put on for a *Cloak* to their Deſigns, Conſcience ſuborn'd to be a Witneſs, and make *Affidavit* of their Integrity, God himſelf ſet up to be their Shield and Patron; and then they grow bold and inſolent, and the rage of their Godly Paſſion becomes implacable.

Have we not *Overt* acts enough to declare theſe Principles and Inclinations in them? Have they not publiſht the *Motto's* and *Symbols* of their Sedition, and ſet up *Raree-ſhows*, and *Banners* for tokens? Are not their Tongues and Pens let looſe in ſcandalous *Paſquils* and opprobrious Diſcourſes againſt his Majeſty? Do they not daily defame his Government, vilifie his Perſon, and traduce his

his Actions? This has been their Practice of ſo long a ſtanding, it may eaſily preſcribe, and paſs for *Cuſtome* and *Common Law* among ſome of them.

But now of late they have taken a greater licenſe to be Seditious, and that they may ſupplant his Majeſty with more eaſe and a better colour, they do not only queſtion his Right to govern and ſtart a *new* Title to the Crown; but menace a *Seizure* of his Sacred Perſon, and *paradigmatize* his future Sufferings in the Example of his *Royal* Father.

I confeſs I could eaſily be induced (if I had no other Circumſtances befor my eyes) to *think* ſuch Emergencies as theſe, nothing elſe but the effects of *Hot-heads*, and intemperate Paſſions; or the raſh [illegible] of ſome *Male-contents*, whoſe ambition or avarice may have met with diſappointments at *Court:* but when I ſee a violence offer'd to the proceedings and courſe of Law; when I cannot but take notice, that *Officers* of Publick *Juſtice* do abet thoſe very Crimes they are *impannel'd* to detect, and ſtifle the *Evidence* they are ſworn to follow, and ſecure the Perſons *arraign'd* before them, by an unaccountable *Ignoramus*; This,

I confeſs, ſeems to me, not only a *Symptome* of a diſtemper'd *State*, but a perfect *Diagnoſtic* of ſome *Deſign*, a vehement preſumption of ſome *Plot* betwixt the *Pannel* and the *Parties* Indicted, whom they will not think meet, or truſt to be Arraign'd.

I have been told of a twofold *Ignoramus*; the one, they call, *Puræ Negationis*, the other, *Pravæ Diſpoſitionis*: An Ignorance out of a pure Negative want of Underſtanding, which is the Caſe of *Ideots*; or elſe it happens, when men are utterly in the dark for want of *Information*. We have good reaſon to aſſure us thoſe *Jurors* were not of the firſt ſort: the Law debars them for their Incapacity. And as we have been told, they treated the *Witneſſes* with ſo much *dexterity*, and put ſo many *nice* and *captious* Queſtions to them, that their apprehenſions can no way be ſuſpected.

Did they than want Information, or had they not more than they lookt for, and a great deal more then they deſired? Did the Witneſſes interfere or miſtake in ſome Circumſtances of leſſer moment? If they did, was it more palpable or more material, than is uſual in Evidences of this Nature? How-

ever,

ever, if they were not ſatisfied,(having before them ſufficient, and more than probable grounds for an Accuſation,) why did they not ſubmit the whole buſineſs to a ſtricter Examination, and the Priſoner to a Legal Trial?

This *Ignoramus* therefore is of another kind; *Pravæ diſpoſitionis:* Did it not proceed from an affected *pravity*, and an evil diſpoſition? What Charity can free them from this Imputation? Were they not men of the ſame Kidney, the ſame Club, Livery and Faction with the Priſoner, and ſo not fit to be put upon the *Jury?* For, being ſo, by that *Pannel* they became *Judge* and *Party* too; which is clearly againſt all the Rules of Law and Equity.

But let us hear their Oath, that we may the better underſtand their duty; and then obſerve how well they did perform it. The Tenour of their Oath is this, **You ſhall diligently enquire, and a true preſentment make of all ſuch matters and things as ſhall be given you in Charge—You ſhall preſent no man for envy, hatred, or malice; neither ſhall ye leave any man unpreſented for love, fear, favour, or affection; or**

hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God.]

Where, we see they are bound by Solemn *Oath* to present things as they come to their knowledge. This excludes all *Negatives* and a simple *Nescience:* no *Supernatural Inspiration* is here to be pretended: no *Enthusiastical* perswasion to be admitted: but they are to follow Truth and Justice as far as the best of their Understanding can carry them.

And how is their Understanding to be directed? Doubtless this is to be done (1.) either by Publick *Fame*; or (2.) by the *Notoriety* of the Fact; or (3.) by *ocular* inspection and *personal* knowledge; or else (4.) by the *Information* of credible Witnesses. But I humbly conceive such as *Conceal*, or (which is all one) *quash* the Discovery of a Treason or any other Crime, are, in Law, suspected to *abet* and encourage it.

I am not ignorant that men of profligate Lives and Consciences, as well as those of desperate Fortunes, may *accuse* and charge Persons of known and eminent Integrity, out of malice

malice or design, when there is no probable ground for such Accusations; and such *Indictments* are deservedly disown'd, and ought to be thrown out as *Libellous* and Scandalous Suggestions.

But when the King is personally concern'd in the Indictment, (whose person is of more value with Loyal Subjects than ten thousand of themselves, and therefore so strictly guarded by all Laws, both Human and Divine, as well against the heart and imagination, with the tongues and pens, as against the hands and assaults of bloody Rebels and *Assassines:*) He is worthily supposed to carry the tenderness of a Father toward his Subjects, which always puts him in mind of his Duty to protect; and therefore abhors all thoughts, as well as projects, to insnare them. 2 Sam. 18. 3.

When a Subject therefore is *Indicted* for some Crime against his dread Soveraign, such a person (though cried up for never so great a *Patriot* among the *Rabble*) is not factiously or pitifully to be dismist; but to be put under so much the severer Examination. Inquiry is to be made into his Manners, and the tenour of his Conversation; what Principles he has

own'd, what Practices and *Machinations* he has been concern'd in, (for a wicked man is presumed to be no *Changling*, till he has given cleer, constant and lasting proofs of his amendment:) how he stands affected for the present; what *Party* he has espoused, what Speeches he has utter'd, and what general Design he aims at; which will be no hard matter to determine by the means he uses to accomplish it. Upon such an *Inquisition* it will be very easie to resolve, and with *moral* certainty, whether the *Party* is to be suspected liable to such an Accusation brought against him.

I do not deny but the *Witnesses* are to be taken into Consideration too; but that is more properly done upon the *Trial*, when the Prisoner makes Exceptions against them (against which time they come prepared, for that reason, to justifie their own Credibility) but for the *Grand Jury*, (who have nothing to object against them, of their *own* certain knowledge) to be very strict and scrupulous in sifting the King's *Evidence*; and then to let the *Accused* escape without a *Legal Trial*, (I mean, to dismiss him, and not suffer him to be brought to the like Examination, (when these Witnesses

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appear to be *Probi & Legales homines*) beſides the little regard it ſhews to the King's life and ſafety, it favors ſo rank of Faction and a ſelviſh *Partiality*, no Loyal Stomack can digeſt it.

For if it be thus with the Prince, will it be any better with his Loyal Subjects? and if things be ſuffered to run at this rate, it will come to paſs in a ſhort time, that None ſhall *ſuffer* that be of ſuch a Faction, tho never ſo guilty; None ſhall be *ſafe* that are againſt it, tho never ſo Innocent. And then what will become of our *Engliſh* Liberty? Whither ſhall we Appeal when our Goods are rob'd and plundered, or our Lives threatned or aſſaulted? *Magna Charta* will no longer be the Priviledge of the Loyal (for whoſe ſole benefit it was granted) but his Snare, and the *Monopoly* of *Traitors* and *Diſſenters*.

'Tis very true what you alleadge, That no Oath can be taken againſt the King; and this ſhews that the Laws have a great *veneration* for his Majeſty, and ſet a Sacred eſtimate upon, both his *Perſon* and *Authority*, in proceedings of this kind. But this is no prejudice to the Party arraigned; for if he has any Witneſſes they are obliged to declare the Truth they know,

know, (relating to the *Trial* in hand) as if they were upon their Oath; and their Teſtimony, always finds a valuable regard, according to the due weight and merit of it.

But what they alledge muſt not be upon *Conjecture* or a doubtful *Hear-ſay*, but upon their own certain knowledge; which, how men can pretend to in Matters of *Fact*, unleſs you'l make them *Ubiquitaries* and *Omniſcient*; or the Matter of *Fact* be limited to ſuch Circumſtances of *time* and *place*, as they can poſitively ſay and ſwear they were individually *privy* to, cannot eaſily be imagined. And if they proceed upon an *implicite Faith*, that is no very credible practice, being derived from the Church of *Rome*, and deſervedly Condemn'd by all true *Proteſtants*.

But in this Caſe, you know very well, there was no ſuch thing as a *Counter-Evidence* or Croſs-Examination; For the *Jurors* were to the Priſoner both his *Vouchers* and his *Judge*; and did deliberately Acquit him by an *Ignoramus*.

But you tell me (for you leave nothing unſaid that may make for their Excuſe) that theſe *Juries* are *Judges*; and for ſome ſort of them,

them, I am very ready to acknowledge it; not only becauſe it is the Opinion of *Stephen Colledge*, and *John Lilburn* before him; but becauſe it is the Judgment of my Lord Chief Juſtice *North*, who tells that *Jury* (Impannel'd to try *Colledge*, *pag.* 97.) *As to the truth of the Evidence, that is a queſtion of Fact, ariſing from the Witneſſes, and muſt be left upon them, whereof* (his Lordſhip tells them) *you are the proper Judges.*

But this is ſpoken of a *Petty Jury*, a Jury of *Life* and *Death*, which may differ much from that of a *Grand Inqueſt*; whoſe Duty is to *enquire* for our Soveraign Lord the King, All Bills of *Indictment* are preferred to them to that effect.

The Witneſſes to thoſe *Bills* are charged upon Oath after this manner; *The Evidence which you ſhall give to the Grand Inqueſt againſt* A. B. *upon this Bill, ſhall be the Truth, the whole Truth, and nothing but the Truth.* Theſe Witneſſes are ſent to the *Grand Inqueſt*, or examin'd in *open Court* before them; when *They* are agreed, then, upon the *backſide* of thoſe Bills they find true (which they always do, or ſhould do, where they find a probable Ground

Ground for an Accuſation) they Indorſe *Bil-la Vera*; and thereupon the *Party* who ſtands Indicted, is *Arraign'd* before a *Petty Jury*, legally returned to Try him,

But upon ſuch Bills as theſe *Jurors* find falſe (which is or ſhould be *only* when there is no ſufficient Ground for an Accuſation), They Indorſe an *Ignoramus*: Theſe Bills are rejected, and the Parties never brought to Trial. And, if here be a Miſtake, or a wilful *Preterition*, 'tis like an Errour in the firſt *Concoction*, that will hardly admit of an after Remedy.

But by theſe Proceedings it appears clearly, that the *Grand Inqueſt* is obliged to weigh and ponder the *Contents* and *Merits* of the Bill, and to regard the *Credibility* and Sufficiency of the Witneſſes; and upon a due Conſideration of them both, They do either *quaſh* the Bill, as unfit to be preſented, or elſe *preſent* it, and ſo promote the Proſecution of the Party.

A Judgment of *Diſcretion* therefore we muſt allow them, and ſomething more; for they will take themſelves to be undervalued if they ſhould not have the Honour to be reputed as Great *Judges* as thoſe of a *Petty Jury*:

Judges

Judges therefore let them be a Gods Name in their own Capacity, provided they move not out of their own proper *Sphear*, nor upon another *Center* from the Supream Authority; for we are told by St. *James*, There are *Judges of evil thoughts.*

Let these *Will-be* Judges therefore stand forth and hear their *Charge* and *Duty* from the mouth of God himself. *Judges and Officers shalt thou make thee* (the Law of God extends to all Ministers of Justice): *and they shall judge the people with just judgment: Thou shalt not wrest judgment: Thou shalt not respect persons, neither take a gift. Justice, Justice*, or as the *English* Translation reads it, *that which is altogether just shalt thou follow.* Deut. 16. 19, 20

For One that is entrusted to hold the Scales of Justice even, and to weigh all Matters that are brought before him according to their due Merit; for such a One to come into a Court of *Judicature*, with his [a] false *Ballance* and his *Bagg* of unjust Weights, with an *Epha* and an *Epha*, 'tis an Abomination. [a] Mica. 6. 11. Prov. 11. 1. c. 20. 10.

What is the false *Balance*, in the *Moral* of it, but a corrupt Conscience? What are those unjust *Weights* but corrupt Passions? A slavish

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fear, and a fooliſh pity; a greedy hope, and a fond affection; a filthy Bribe, or a fawning Popularity? Theſe are the falſe *weights*, that will turn the *Scales* of Juſtice from the due courſe of Right and Equity. And what is it to have an *Epha* and an *Epha*, but to meaſure out our reſpects and dealings, according to our inclinations, be they more or leſs, to this or the other Party? When the *Indictment* is for the very ſame *Crime*, and the *averment* made by the very ſame, or no leſs creditable *Witneſſes*, to ſet *Billa Vera* upon the back of a true *Conformiſt* (who loves and obeys the Laws and Government) and to diſmiſs a *Diſſenter* (who deſpiſes both) with an *Ignoramus*; This is an execrable *Partiality*.

And he that takes upon him to be a *Judge*, or if he be duly conſtituted to bear that Office, He may as well juſtifie the practice of taking *Bribes*, as that of *Partiality*; for indeed they are equally forbidden, and *Partiality* ſeems to be the greater fault; for *Bribes* are forbidden on purpoſe to prevent *Partiality*; becauſe they may *blind the eyes of the wiſe, and pervert the words of the righteous*, Deut. 16. 19.

But *Bribes* are not the only Temptations

to

to *Partiality*. There are Temptations of another Nature, both from *within*, and from *without*; tho those from *without* could have no effect, if they were not invited from *within*, and found no entertainment there; (for in this case the *Receiver* makes the *Thief*).

Some are tempted and suborn'd by an inveterate *Malice*, and some by a peevish *Frowardness*; some by a proud *Ambition*, and some by a sordid *Avarice*: some by a foolish *Pity*, and others by a fawning *Popularity*.

God has thought fit to *challenge* all *affections*, that are put upon the *Pannel*, except the *love* of Justice: [b] *Ye shall not respect persons in judgment; but you shall hear the small as well as the great; you shall not be afraid of the face of men; for the judgment is Gods.* There he sets aside *two* at once; not only *fear*, but *favour and affection* too. As he will not have the judgment of the Poor wrested, for *lucre* or *ill will*, so neither will he allow him to be *countenanced* in his Cause out of a *Partial* fondness [c]. *Thou shalt not respect the person of the poor, nor honour the person of the mighty*, (Levit. 19. 15.) Here *Pity* and *Ambition* are set aside. And *Covetousness* without all question is *set by*, in the same Pro-

[b] Deut. 1. 17.

[c] Exod. 23. 3, 6.

hibition with *Oppreſſion* & *Bribery*. And becauſe *Popularity* ſwaies very much with *diſcontented Politicians*, who (being thrown out of Imployment) are wont to court the *Multitude* for their own Ambition or Security, and becauſe not only *frantick Zelots*, but alſo *jealous* and *well-meaning* Perſons, (who are eaſily impoſed upon by plauſible pretences,) are apt to follow ſuch Leaders; Therefore that crafty and aſpiring Paſſion of *Popularity* is ſet aſide as altogether unfit for *Judicature*. *Thou ſhalt not follow a Multitude to do evil: neither ſhalt thou ſpeak*, (or anſwer) *in a Cauſe, to decline after many, to wreſt judgment.* He is neither to joyn in the *Conſpiracy*, nor to *countenance* or *approve* thereof; for it is a deadly ſin: but he is obliged, to the utmoſt of his power, to endeavor to *hinder* it, as his bounden duty.

Exod. 23. 2.

That *Jury* that acquits a Notorious *Malefactor*, and finds a man of *Integrity* to be Guilty, the Reſult of their *Inqueſt* is not a *Verdict*, but a *Conſpiracy*. To paſs an *unjuſt* Sentence upon the *Innocent*, (common Humanity will Condemn; and to *abſolve* a preſum'd *Criminal*, ſtands upon an *equal* guilt in God's account; and they are both abominable; *He that juſti-*

justifieth the Wicked, and he that condemneth the just; even they both are an abomination to the Lord: Prov.17.15. Against the Acquital of the Wicked, we have these Reasons from Mr. *Cartwright*; (1.) *They always grow worse, when they are absolved,* (as he observes); (2.) *Honest men are disturb'd and troubled at it; and sometimes are tempted to take too much Licence, from such Indulgence, to follow the lewd Example.* (3.) *Such wicked men as are flesht by such indulgence, are apt to run headlong into greater Crimes.* But as he observes— Ad locum.

If he who commits any *one* of these two Crimes of Injustice be *abomination* before God; then certainly He who runs desperately upon them *both*, provokes a greater Indignation against himself from Divine Vengeance. And give me leave to observe thus much to you, that They must *Condemn* the King, if they can *Acquit* the Prisoner upon such an Accusation.

Solomon tells us, *It is not Good*, (which is a Figure of *Rhetorick*) and signifies, it is extreamly ill) *to accept the person of the wicked, to overthrow the righteous in judgment:* Much more certainly, (and how much more must Prov.18.5.

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be left to *deciſion* of the Great Judge, who underſtands beſt what a value he ſets upon his own *Vicegerent*) to overthrow a *juſt Prince*, when his *Life* and *Honour* are in jeopardy.

'Tis not ſo ſmall a Fault as the *Vulgar* apprehends, to let go a Common *Criminal* without puniſhment; for ſuch a one (if he be Notorious) is a *Common Curſe*; and ſo are they that make it their Buſineſs to acquit him; *He that ſaith unto the wicked, Thou art righteous, Him ſhall the people Curſe; Nations ſhall abhor him.* However ſuch a *Malefactor* may be flattered by a *factious* headſtrong *Rabble*, the Nations of ſober and juſt men will cry out againſt him; yea, and againſt *them* too (for encouraging his Impiety,) and the cry of their *Execrations* will enter into the Ears of the Lord of *Sabbath*, and ſo much the *ſooner*, when the juſt complaints of the *Lord's Anointed* bears them Company.

Prov. 24. 24.

Sir, you need not have askt that Queſtion, What Meaſures the *Jury* ſhould take in ſuch a Caſe? If they had been an *Ignoramus* in a ſtrict and proper ſenſe, perhaps it had been better for *them*, tho no leſs *abominable* in ſuch as *made* the *Pannel*; for taking them to be what

what they think themſelves, and what the *Populacy* begins to call them; that is taking them to be *Judges*, in the Caſe, we find that of St. *Auſtin* to be moſt true, *Ignorantia Judicis plerunque eſt Calamitas Innocentis*: the Ignorance of the Judge is for the moſt part, the Miſchief of the Innocent. [d] De Civit. L. 16. c. 6.

St. *Ambroſe* [e] gives an excellent deſcription of a good Judge: *He does nothing Arbitrary, or out of a private Reſolution. He brings none of the Prejudices of his own will unto the Tribunal with him. He puts off all favour and affection, and lays aſide all inclinations of fleſh and blood, that he may not be prepoſſeſt or biaſs'd, and ſwerve from the Rule of Law; but conforms his Sentence to the Statutes of Juſt and Right. He does indulge nothing to his own Conceit: He brings nothing from home with him, that is premeditated and prepared to warp his Judgment: He follows the Laws, not oppoſe them, and examines the Merits of the Cauſe but does not adulterate or change it.* [e] Serm. 20. in Pſal. 118.

We have the beſt Example for this Practice, the Judge of all the world: *Joh.* 5. 30. *I can of my own ſelf do nothing; as I hear I judge: and my judgment is juſt, becauſe I ſeek not my own, but the will of him that ſent me.* 'Let the Judges of the

'world

'world learn from hence, saith the *Father*, with 'what *affection*, what *sobriety*, what *sincerity* they 'should approach the Seat of Judgment. He 'that is *Omnipotent* can do nothing by his 'Power, but governs himself by his *Integrity* 'in a Case of Judicature. The Duty is so Sa- 'cred, He indulges nothing to his own will in 'it, but devotes himself solely unto Justice; 'As I hear I judge; and my judgment is just, be- 'cause I follow the Rule and Laws *of him* who 'put me into *Commission*. *Quasi homo loquitur*, 'quasi judex docet: Christ speaks like a man; but 'teaches like a Judge; for he that judgeth Idem Ibid. 'must not follow his own will, but the course 'of Law and Justice. But the *unjust Judge* does otherwise: *Pilate* says not so, [*As I hear I judge*] makes no such Profession: But *usurps* Autho- rity at another rate, *Joh.* 19. 10. *Knowest thou not that I have power to crucifie thee, and have power to release thee?* *Pilate* is here taken by the words of his own Mouth, (saith that *Fa- ther*;) The *Laws* of Justice are not his Rule, but his *Power*: And by that *Power* he *condemn'd* the Prince of Peace; and by that *Power* He *acquit- ted* that very Person, who had made a *Sediti- on* in the City, and committed *Murder* in the Luke 23. 19. Mark 15. 7. heat of his Insurrection. Was this according

to

to Conscience, to the Rule of Equity, or the Law of Nations?

A Judge is to proceed according to his Evidence, *Secundum Allegata & Probata*; not according to his own Conceit, or human perswasion; wherefore the *Clerk* calls upon *Jurors* to attend and to *hear their Evidence*; which were to no purpose, if they were allowed to govern themselves by any preconceived *prejudice*, either against the Person or the Truth and Honesty of the Witness. For he judges as a *Publick* person (and so should all *Jurors* act) for his King and Country; wherefore he is obliged to follow, not the *Notions* he has as a *private* person, but to govern himself by the *Laws* and *Customs* of his Countrey, by such *Informations* and *Notices* as come to him regularly upon the account of his *Office* and Authority. If a Judge should be allowed to do otherwise, a *Gap* would be set open to Condemn the *Innocent* as well as to free the *Guilty*: The people would learn to *despise* the Laws, and have the course of Justice in Contempt by such examples; the *tranquility* and *peace* of the *Commonwealth* would be disturb'd, and all the *Foundations* of the Government would be

out of Course, as the Learned *Lawyers* and *Casuists* do observe.

There is *One* Case, and but *one*, that I have met with, wherein a Judge may *decline* the *Evidence* which is given, and not proceed upon the Matters alledged and *judicially* prov'd before him: that is, when, according to the *Common Course of Law*, he should take away the life of a Man, *Quem evidenter novit esse Innocentem*, whom he does *evidently* (and not by conjecture or good opinion only) *know to be Innocent*, as *Amesius* states it. For example, *A. B.* is arraigned for Murder; the Allegations and Proofs produced are strong & clear to make him Guilty. Tho the Witnesses be never so *positive* in their Assertions; yet if the Judge knows the person Accused to be *free* and *innocent*; if he knows He was then *Absent*, or else observed him *quiet* and *unconcern'd* in the quarrel, and saw *another* person commit the Murder: upon this his *certain knowledge* of the Matter of *Fact*, neither *Law*, nor *Conscience* will allow him to give Sentence upon such an *Innocent* person, but he is obliged to use his utmost *diligence* and *interest* to rescue him from false Accusers.

Cas. Conf. L. 5. c. 54. §. 21.

But

But this is so far from the Case in hand, that had *Amesius* been alive, he would have commenced *a fresh Suit* against such an *Ignoramus*, with as much heat and vigor as ever he did against the *Ceremonies* of the Church of *England*.

I speak now of this *Grand Inquest*, as they are lookt upon in the quality of *Judges*: And Judges we know, have not long since, been *impeacht*, for *Illegal*, *Partial*, and *Arbitrary* proceedings. If these *Jurors* will put themselves upon the *Bench*, with Judges, they must be content to take the like fate with them, when they are observed to do amiss. For their offence is of a higher and more extensive Nature; and being, at least *forty* for *one*, more diffused, 'tis so much the more pernitious; and if a timely Remedy be not apply'd, 'twill spread so fast and so far, as to grow *Epidemical*, and Corrupt the *Justice* of the Nation: And now the Practice is so bold as to affront the King, no man can expect better measure from such *Pannels*, unless he be a *Bird* of the same *Feather*; For 'tis evident, that among the several ways and methods of *discovering* a *Criminal*, two at least, are pre-

vented and suppreſt by this means. For you muſt give me leave to expoſtulate the Caſe with you.

1. Was there no *Colour*, no *probable ground*, no *ſufficient* matter for an Accuſation? Was not the *Indictment* for Crimes of as deep a *dye* as thoſe for which others have been deſervedly *Condemn'd*? Was not the *Evidence* as full, cleer, and every way as ſufficient, both for *weight* and *number*, as the Law requires? Were not ſome of the Witneſſes the very *ſame*, and all of them of as good *Repute* and *Credit*, as thoſe that ſerv'd the turn, without diſpute, in *other Caſes*? Durſt not thoſe *Jurors* truſt the Priſoner to be tried by *God* and his *Countrey*? Or durſt they not Truſt him to *Himſelf*, leſt the preſence of his Accuſers, and the force of their Charge, face to face, ſhould *ſting* him into a *Conviction*, and melt him into ſo much *Ingenuity* as to *Confeſs* the Fact, to diſcover the *Aſſociation*, and betray a *Common Guilt*?

Is there not ſuch a *Proclamation* as this made at the *Arraignment* of a Malefactor? *If any man can inform my Lords, the Kings Juſtices, the Kings Serjeant, or the Kings Attorney,*

or this Inquèſt to be taken between our Soveraign Lord the King, and the Priſoner at the Barr, of any Treaſon, &c. *let them come forth, and they ſhall be heard.*

Who can tell but ſome *Shy* or *Modeſt* Witneſſes might have taken Courage to ſhew their *Duty* and *Allegiance*, had they ſeen the Priſoner thus *legally* Arraign'd, and brought to *Trial* in good earneſt?

Theſe *two* ways of diſcovering the Crime, that is to ſay, 1. By the *Confeſſion* of the *Party* upon Conviction; and 2. by ſuch *Evidence* as might have come in upon *Proclamation*; were prevented and ſuppreſt by this *Ignoramus*. And it ſeems, The *Crown* and *Dignity*, nay the very *Life* of our *Dread Soveraign*, which was pretended to be ſo *deer* and *pretious* to us, when 'twas threatned and endanger'd by the *Papiſts*, is now become ſo *low* and *cheap*, in our eſteem, when it is like to be *ſold* or made over into the hands of a Faction of *Republicans*, that 'tis not ſo much as to be Conſidered, or put into the Balance, when the life of *one* of that *Party* is call'd in queſtion.

You are pleaſed to ask me, Would you not

not have them go according to their *Conſcience*? Yea, with all my heart. But if we duly weigh the *Nature* and *Offices* of *Conſcience*, we ſhall eaſily diſcern that this is but a *futilous* and *putid* Allegation; For Conſcience has no ſuch *Franchiſe Royal*, as ſome of late have made it; it gives us no *priviledge* to do what we liſt; for it is a kind of *Conſiſtorian Conſtitution*; there is a *Judicature* ſet up in it; and the *proceedings* and *Office* therein exerciſed, are thought to be beſt and moſt aptly ſet forth by the Parts of a *Categorical Syllogiſm*; wherein the Law makes the *Major* Propoſition after this manner, *Every Traytor ought to be brought to Condigne puniſhment:* The Evidence makes the *Minor* thus: *This Perſon* A. B. is a Traytor; And when theſe *two* Propoſitions are laid together, A Good Conſcience can never fail of a right Concluſion. And let me talk never ſo demurely, when *Religion* is made nothing but a *Faction*, Conſcience can be nothing elſe but *Conſpiracy*, or *Pretence*.

Amesius Caſ. Conſc. l. 1. c. 1. §. 7, 8.

But I perceive you think it a great piece of *Charity*; and if it were an *Errour*, you tell me, it was an Errour of the *right hand*, and

ſo

so the more excusable: But, Sir, *Charity* must not appear upon the *Bench* to obstruct the Justice: God gives her no such *Commission*; She is to be no *Advocate* in a Case of *Judicature*, when a Matter is upon *Trial*; how far soever she may obtain *Audience* when the Trial's over. And be the Errour on which hand it will, there lies a *Writ* against it in the *Court* of Heaven. Deut. 16. 20

Nor will the pretended Charity to a *single* Person compensate the Mischief of Unjustice done to the *Community*. In such Proceedings of a perverse *Inquest*, there is a Complication of more and more grievous Miscarriages than possibly you may imagine.

For you must always remember, These *Jurors* are under Oath, not to *Conceal* any thing that shall come to their knowledge, for *Fear*, *Favour*, or *Affection*, *Reward*, *Gain*, or *Hope*; but to present the *Truth*, and *the whole Truth*. Now in doing otherwise

1. They *violate* this *Oath*; and turn the *Sacrament* of Truth into a *Sanctuary* for Transgressors. And if it be certainly true (as most certain it is) That for *rash* and *common* Oaths the Land *mourn*; much more for the breach

breach of *Solemn Ones*, and moſt of all, when this is done by the *Miniſters of Publick Juſtice*.

2. They *fruſtrate* the *end* of ſuch *Civil* Conſtitutions; They *reſcue* a *common Peſt*, a Traitor from *condigne puniſhment*; which may bring a *common Guilt* upon the Kingdom.

3. They leave the *Perſon* of the Prince *expoſed* to the *Machinations* of a Traitors Malice, whom ſuch *Indulgence* will *animate* to the greater danger of the King, and perhaps the *Ruine* of the Kingdom,

4. They *defame* the *Witneſſes*, and lay the fouleſt blot upon *them* that can be imagined; They give occaſion to make the World believe, That they are *ſuborn'd* and *perjur'd* men, of no *faith* in their Averments, of no uſe in a *Commonwealth*, nor fit for any truſt in *Civil Converſation*. And if this be according to the Law of *Charity*, and *doing as we would be done by*, (which is the Law of Chriſt) The Gentlemen of ſuch *Inqueſts* muſt be content to have their own Reputation *Meted* out by the very *ſame* Meaſure.

5. They incur the *Guilt* of all thoſe *Crimes* charged in the *Indictment*; For tho 'tis probable

bable, They were not of the *Cabal*, or admitted into the *Cabinet*, to give the *Advice*; yet they *abett* the practice by *Conſent*, and become guilty by the *venome* of *Adhæſion* in a tacite *Concealment* of the Fact, and removing the *Criminal* out of the way of *Trial* that he may *eſcape* the hand of *Juſtice*.

What you ſay more for their Excuſe ſeems to carry a ſuſpition, that you think them of the ſame *Party* with the *Accuſed*; and no man is bound *to accuſe himſelf*. But I muſt take leave to tell you, He that knows himſelf *Guiltleſs* may take a *voluntary* Oath to *acquit* himſelf, and *aſſert* his own *Innocency*.

But, if he be put upon the *Pannel*, and accepts the Office of a *Juror*, you know he is ſworn to make a true preſentment, not only of all ſuch *Matters*, *Articles*, and *Things* as are given him in *Charge*, but alſo of ſuch *other Matters* and *Things* as ſhall *come to his knowledge* touching the preſent Service. Having *accepted* this Service (from which he might have *excuſed* himſelf) He is *bound* by his Oath (as he makes it *voluntary* by not declining it) *to diſcover the whole Truth* he knows, tho he finds *himſelf* involved in the guilt; and in the

Course of Justice, where any *Conscience* is left, it is no unusual thing to find *Confitentem Reum*, a Guilty Man his own Accuser.

Sir, to conclude your trouble with my own, I cannot dissemble my Opinion, That such as stickle so eagerly to release *Barrabbas*, if it were in Their power, They would easily *deliver up* Jesus *to be Crucified*. For if you well observe it, *That* was done by a kind of *Ignoramus* Jury: So much is imply'd in our Saviours Prayer for them: *Father forgive them*; for *They know not, what they do*; Indeed their *Ignorance* was not *invincible* but *wilful* and *affected*.

Their *Zeal* made them *Mad*, and their *Malice blind*, and both together kept them *Ignorant* of the things which belonged to their Peace. Their fear of the *Roman Yoak* made them Conspire against their * *Native King*: *Venient Romani*, the *Romans* will come; That was the pretence: But *Nolumus hunc regnare*, We will not have this Man to reign over us, was their stubborn Resolution.

* Matth. 2. 2.
John 11. 48.
Luke 19. 14.

The fruitless *Figg-tree* was mark't out for the *Symbol* both of their *Guilt* and *Punishment*, and became a *Prolusion* to Gods *derelictio* of Them

Them under the *Course* of a *Sacred* barrenness. After several severe *Essays* of his Displeasure without any *Remedy* or *Effect*, at last (* and that within less than *Forty* years) † *The wrath of God came upon them to the uttermost.* And through their damnable *Hypocrisy* against Heaven, and their restless *Mutinies* and *Seditions* against their Governours, Divine Vengeance brought upon them their own *Fears*: the *Romans* came in good earnest, and *took away both their Place and Nation*: left them neither *City* nor *Temple*, neither *Priest* nor *Sacrifice*, neither *Prince* nor *Government*. Their Kingdom was of *this World*, and whatever They might pretend, They look't no *higher*. And if we reflect upon Their present Circumstances, They are *skilful* only to get *Wealth*, but a common Execration among all Nations.

* King *Charles* I. murdered *Jan.* 30. 1648. which is 33 years since. *Deus avertat Omen.*

† 1 Thess 2. 15, 16.

And this was the sad Fate of a *Jerusalem Ignoramus.*

1 Cor. X. 11, 12.

Now all these things happened unto them for Ensamples: and they are written for our Admonition,

nition, upon whom the Ends of the World are come.

Wherefore let him that thinketh he ſtandeth, take heed leſt he fall.

FINIS.

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